

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK HUGH PETTY, JR.,

Defendant-Appellant.

UNPUBLISHED

May 4, 1999

No. 199571

St. Clair Circuit Court

LC No. 93-003061 FC

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

In 1994, defendant pleaded nolo contendere to aiding and abetting manslaughter, MCL 750.321; MSA 28.553, and was sentenced to five years' probation. In 1995, he pleaded guilty to violating his probation by consuming alcohol, but his probation sentence was continued at that time. Later, in 1996, after defendant pleaded guilty to violating his probation a second time by smoking marijuana, defendant's probation sentence was revoked and he was resentenced to seven-and-one-half- to fifteen-years' imprisonment. Defendant now appeals by right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant first argues that he is entitled to a new probation violation hearing because the trial court failed to revoke his probation sentence prior to imposing a prison sentence, failed to state the basis for revoking probation, and may have improperly relied upon uncharged conduct as a basis for revoking probation. We disagree. Although the trial court did not formally revoke defendant's probation after accepting his plea of guilty in 1996, the trial court revoked defendant's bond and remanded him to jail pending sentencing at that time, and both counsel acknowledged that they fully expected the court to impose a term of incarceration. Moreover, unlike the cases cited by defendant, the trial court did not allude to any disputed uncharged conduct at either the plea or sentencing hearing.

Defendant also contends that he is entitled to resentencing on grounds that his sentence is disproportionate and constitutes cruel and unusual punishment. We again disagree. The imposition of the maximum possible sentence upon an offender with no prior record is not automatically disproportionate. *People v Granderson*, 212 Mich App 673, 680-681; 538 NW2d 471 (1993).

Here, defendant's sentence is well below the maximum possible sentence for aiding and abetting manslaughter, which is ten- to fifteen-years' imprisonment, not seven- to ten-years' imprisonment as asserted by defendant. The sentencing guidelines do not apply to probation violators and will not be used by this Court in any manner to determine whether a probation violation sentence is proportionate. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). Given the seriousness of the underlying manslaughter offense and defendant's repeated probation violations, we do not find defendant's sentence to be disproportionate or cruel and unusual punishment.

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gibbs

/s/ Joel P. Hoekstra